

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nicholas Venduras	Team: Squad #7	CCRB Case #: 202000948	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 01/31/2020 8:15 PM, Friday, 01/31/2020 8:30 PM	Location of Incident: Outside1396 Fulton Street 79th Precinct Stationhouse	Precinct: 79	18 Mo. SOL 7/31/2021	EO SOL 3/17/2022	
Date/Time CV Reported Mon, 02/03/2020 10:00 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 02/03/2020 10:00 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Henry Daverin	00000	945645	094 PCT
2. POM Keron Edwards	17491	958544	079 PCT
3. LT Louis Martinez	00000	949266	079 PCT
4. Officers			

Officer(s)	Allegation	Investigator Recommendation
A.LT Henry Daverin	Force: Outside1396 Fulton Street, Lieutenant Henry Daverin used physical force against § 87(2)(b)	
B. Officers	Force: Outside1396 Fulton Street, Officers used physical force against § 87(2)(b)	
C. Officers	Abuse: Outside1396 Fulton Street, Officers searched § 87(2)(b)'s recording device.	
D. Officers	Abuse: Outside1396 Fulton Street, Officers deleted information on § 87(2)(b)'s electronic device.	
E.LT Henry Daverin	Abuse: Outside1396 Fulton Street, Lieutenant Henry Daverin failed to provide § 87(2)(b) with a business card.	
F. Officers	Abuse: Outside1396 Fulton Street, Officers failed to provide § 87(2)(b) with a business card.	
G.LT Louis Martinez	Abuse: At the 79th Precinct stationhouse, Lieutenant Louis Martinez failed to provide § 87(2)(b) with a business card.	
H.POM Keron Edwards	Abuse: At the 79th Precinct stationhouse, Police Officer Keron Edwards failed to provide § 87(2)(b) with a business card.	

## Case Summary

On February 2, 2020, § 87(2)(b) filed this complaint via telephone with the undersigned investigator while discussing CCRB case #§ 87(2)(b).

On January 31, 2020, at approximately 8:15 PM, § 87(2)(b) exited a store at 1396 Fulton Street in Brooklyn near Restoration Plaza and saw a large group of protesters walking towards Nostrand Avenue with a large number of NYPD following. Wanting to capture the event on video, § 87(2)(b) began recording with his cell phone while standing in the street between two parked cars. Three plainclothes NYPD MOS, including Lieutenant Henry Daverin, at the time assigned to the 79<sup>th</sup> Precinct, approached § 87(2)(b) and told him to get off the street. After § 87(2)(b) debated with them briefly, the officers took him into custody § 87(2)(b), for which he received a summons. While they were handcuffing him, they allegedly grabbed him and slammed him against a parked SUV (**Allegations A & B: Force – Pushed/Shoved/Threw, § 87(2)(g)** § 87(2)(b)). While doing so, an officer allegedly took § 87(2)(b)'s phone out of his hand and deleted the recording he was making (**Allegation C: Abuse – Search of Recording Device, § 87(2)(g)** & **Allegation D: Abuse – Electronic Device Information Deletion, § 87(2)(g)** § 87(2)(g)). § 87(2)(b) asked these officers for business cards, but they allegedly did not give him any (**Allegations E & F: Abuse – Failure to Provide RTKA Card, § 87(2)(g)** § 87(2)(b)).

Once in custody, Lieutenant Luis Martinez and Police Officer Keron Edwards both of the 79<sup>th</sup> Precinct transported § 87(2)(b) to the 79<sup>th</sup> Precinct stationhouse. While there, he asked for RTKA cards from Lt. Martinez and PO Edwards but did not receive any. (**Allegations G & H: Abuse – Failure to Provide RTKA Card, § 87(2)(g)** § 87(2)(b)). § 87(2)(b) was transported to a mass arrest processing center and was released early the next morning.

The NYPD Legal Department provided three Body-Worn Camera (BWC) videos in regards to this incident. (**Board Review 1 & 2**) The security services at Restoration Plaza provided 33 security videos. (**Board Review 3**) JPMorgan Chase Bank provided an additional 16 security videos in regards to this incident. (**Board Review 4 & 5**)

## Findings and Recommendations

**Allegation A: Force: Outside 1396 Fulton Street, Lieutenant Henry Daverin used physical force against § 87(2)(b)**

**Allegation B: Force: Outside 1396 Fulton Street, Officers used physical force against § 87(2)(b)**

**Allegation C: Abuse of Authority: Outside 1396 Fulton Street, Officers searched § 87(2)(b)'s recording device.**

**Allegation D: Abuse of Authority: Outside 1396 Fulton Street, Officers deleted information on § 87(2)(b)'s electronic device.**

**Allegation E: Abuse of Authority: Outside 1396 Fulton Street, Lieutenant Henry Daverin**

failed to provide § 87(2)(b) with a business card.

**Allegation F: Abuse of Authority: Outside 1396 Fulton Street, Officers failed to provide § 87(2)(b) with a business card.**

**Allegation G: Abuse of Authority: At the 79th Precinct stationhouse, Lieutenant Louis Martinez failed to provide § 87(2)(b) with a business card.**

**Allegation H: Abuse of Authority: At the 79th Precinct stationhouse, Police Officer Keron Edwards failed to provide § 87(2)(b) with a business card.**

§ 87(2)(b) § 87(2)(b), left § 87(2)(b), a community store where he sometimes teaches, at approximately 8:15 PM on January 31, 2020, when he saw the FTP3 Protest centered around Restoration Plaza nearby. **(Board Review 6)** He saw a large group of people walking west on Fulton Street towards Nostrand Avenue followed by what he estimated to be hundreds of police vehicles. He stepped into the parking lane between two parked cars and began filming the protest in front of him. When the protesters were, by his estimate, about four or five blocks away, three plainclothes male NYPD MOS approached § 87(2)(b) on foot.

No security footage from Restoration Plaza or JP Morgan chase shows this interaction but based on the summons § 87(2)(b) received later § 87(2)(b), the investigation determined one of these MOS was Lt. Daverin. **(Board Review 7)** Lt. Daverin, however, did not remember this interaction with § 87(2)(b) did not recognize § 87(2)(b) from BWC, nor could he recall what MOS he was with that night. **(Board Review 8)** He said he had worked so many protests by the time he made a statement to the CCRB, they all blended together. He stated he was moving around the protest independently on January 31, 2020, and could not say who he was with at that point of the night. Lt. Daverin, for various reasons like inclement weather, no Reps available, vacation or him being sick, did not attend five scheduled CCRB interviews between December 1, 2020, and July 13, 2021.

His BWC, filmed at 7:54 PM, shows at least one other MOS and him handcuffing a different civilian near 359 Nostrand Ave in Brooklyn, about 9 blocks away, although the timestamp on the video itself reads 8:07 PM. **(Board Review 9)** Upon review, Lt. Daverin could not identify the MOS in the video and given the time and distance from § 87(2)(b)'s incident, they may not necessarily be the same officers. **(Board Review 8)** This video does show Lt. Daverin's arms at timestamp 0:25 in black clothing and at timestamp 0:40 he appears to have an orange band around his right forearm and wrist. **(Board Review 9)** § 87(2)(b) described one of the MOS who approached him as a White muscular male officer over six feet tall in a black leather jacket with an orange strap on his upper arm with short brown hair and stubble in his mid-40s. **(Board Review 6)**

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

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§ 87(2)(b)

According to § 87(2)(b) the first officer who spoke to him, who remains unidentified, told him to get out of the street. **(Board Review 7)** § 87(2)(b) said he was not in the street and asked if he was

doing anything wrong or illegal. The MOS identified as Lt. Daverin reportedly responded that § 87(2)(b) was not listening and gave an order to the other officers to “Just take him.” § 87(2)(b) was unsure if one or both officers with Lt. Daverin took hold of his right arm, but he remembers being spun around and one of them took his phone out of his hand while still recording. Later after § 87(2)(b) was released from custody, he saw the protest video file on his phone, IMG\_2330, was missing in the sequence from IMG\_2329 created on 1/31/2020 at 6:43 PM and IMG\_2331 created on 2/1/2020 at 11:29 AM. **(Board Review 11)** § 87(2)(b) suspected the officer erased this file from his phone because he was unable to lock it before he took it from his hand. **(Board Review 6)** Lt. Daverin’s stated he did not handle anyone’s telephone or recording device, he did not look at any information on anyone’s phone, nor did he see any other MOS doing so. **(Board Review 8)**

At that point the officers moved him a few feet down the block and allegedly slammed him against a parked small SUV to handcuff him. **(Board Review 6)** At that point, having been turned around 180 degrees, § 87(2)(b) saw the owner of § 87(2)(b), § 87(2)(b) watching the incident from the window of her store. § 87(2)(b) said in an email she only saw the end of this interaction and did not provide any details other than saying § 87(2)(b) was not resisting when NYPD MOS escorted him away. **(Board Review 12)** § 87(2)(b) then asked about his phone and requested business cards from all three MOS under the Right to Know Act. **(Board Review 6)** They allegedly told him not to worry about his phone as they would keep it safe but did not give him any business cards.

Shortly after, Lt. Martinez and PO Edwards transported § 87(2)(b) to the 79<sup>th</sup> Precinct stationhouse which is shown on their BWCs. **(Board Review 13 & 14)** These videos were recorded only after they began driving towards the stationhouse and do not capture anything that would identify the officers with whom Lt. Daverin took § 87(2)(b) into custody. Lt. Martinez remembered speaking to Lt. Daverin and seeing other MOS on-scene but could not identify any of them **(Board Review 15)** Both he and PO Edwards said their role was only to transport § 87(2)(b) to the stationhouse and neither knew the details of how § 87(2)(b) came into custody. **(Board Review 15 & 16)**

Lt. Martinez’ BWC footage recorded inside the stationhouse captures § 87(2)(b) asking for business cards at timestamp 6:20, however this is only in the background and Lt. Martinez is facing away from him speaking to a sergeant behind the desk discussing how to process § 87(2)(b) **(Board Review 13)** In his statement, Lt. Martinez said he never heard § 87(2)(b) request RKTA cards at the time, but if he had he would have provided him with one saying he had nothing to hide as his name was clearly visible, which § 87(2)(b) had already read aloud. **(Board Review 15)**

This request for business cards is also captured in PO Edwards’ BWC at timestamp 6:13, but PO Edwards also appears to be paying attention to the MOS behind the desk and not necessarily to what § 87(2)(b) is saying. **(Board Review 14)** Additionally, PO Edwards never says or does anything that would indicate he heard § 87(2)(b)’s request. Throughout the BWCs, § 87(2)(b) tends to continuously speak his own version of legalese with phrases like “Who is the injured party?” and “I do not consent.” During his interview with the CCRB, PO Edwards initially did not recall this request and said § 87(2)(b) was speaking in a confusing manner. **(Board Review 16)** After watching his BWC, he acknowledged § 87(2)(b) asked for business cards but explained he did not

provide one because § 87(2)(b) was under arrest and arrested individuals are not entitled to them.

§ 87(2)(b) was then lodged at the 79<sup>th</sup> Precinct stationhouse and, according to Lt. Martinez' memo book, then went to One Police Plaza to a mass arrest processing center to be released at 12:38 AM on February 1, 2020. (Board Review 17) § 87(2)(b) estimated he was released around 4:00 AM and when he checked his phone, the video he had taken of the protesters and the officers was not there. (Board Review 6)

Officers receive force guidelines from Patrol Guide Procedure 221-01 which instructs that "MOS will use only the reasonable force necessary to gain control or custody of a subject." (Board Review 18) Patrol Guide Procedure 221-02 defines "Passive Resistance" as "minimal physical action to prevent a member from performing their lawful duty. For example, a subject failing to comply with a lawful command and stands motionless and/or a subject going limp when being taken into custody." (Board Review PG 19) This procedure instructs officers again to "apply no more than the reasonable force necessary to gain control." § 87(2)(g)

*United States v. DiMarco*, 2013 U.S. Dist. LEXIS 16279 discusses warrantless searches of cellphones. (Board Review 20) It determined "the unique and significant information-storing capabilities of the modern cell phone" gives civilians a reasonable expectation of privacy and therefore must fall within the exceptions of a warrantless search before officers can look at its contents. § 87(2)(b), § 87(2)(g)

Patrol Guide Procedure 212-11 entitled *Investigative Encounters: Requests for Information, Common Law Right of Inquiry and Level 3 Stops* instructs officers on when to provide civilians with business cards under the Right to Know Act. (Board Review 21) It tells officers, with few exceptions, to provide civilians with a business card. Exceptions occur when the "encounter ends

in an arrest or a summons, unless requested;” when “exigent circumstances require...immediate action;” or when “someone else is in danger of physical injury, there is an imminent risk of property damage, to forestall the imminent escape of a suspect, or the imminent potential destruction of evidence.”

As Lt. Daverin stated, he had no recollection of his encounter with § 87(2)(b) and could not give any details. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

### Civilian and Officer CCRB Histories

- Lt. Henry Daverin has been a member of service for 13 years and has been the subject in 35 CCRB complaints and 131 allegations, of which eight were substantiated (**Board Review 22**):
  - 201502623 involved substantiated allegations of a frisk, refusal to provide name/shield number and a vehicle search against Lt. Daverin. The Board recommended Command Discipline A and the NYPD Imposed Command Discipline A.
  - 201604699 involved a substantiated allegation of premises entered and/or searched. The Board recommended Command Discipline B and the NYPD imposed no disciplinary action.

- 201911006 involved substantiated allegations of a frisk, two stops, and discourteous language against Lt. Daverin. The Board has not yet recommended disciplinary action and the NYPD has not taken any.
- § 87(2)(g) [REDACTED]
- Lt. Louis Martinez has been a member of service for 11 years and has been the subject in eight CCRB complaints and 14 allegations, one of which was substantiated. **(Board Review 23):**
  - 201604838 involved a substantiated allegation of abuse (other). The Board Recommended Command Level Instructions and the NYPD imposed no disciplinary action.
  - § 87(2)(g) [REDACTED]
- PO Keron Edwards has been a member of service for six years and this is the first CCRB complaint to which he has been a subject. **(Board Review 24)**
- § 87(2)(b) [REDACTED] has been party to one other CCRB complaint and has been named a victim in six allegations **(Board Review 25):**
  - § 87(2)(b) [REDACTED]

### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) [REDACTED] rejected mediation.
- On July 24, 2021, a Notice of Claim inquiry was sent to the NYC Office of the Comptroller. On July 28, 2021, the NYC Office of the Comptroller stated no notices of claim filed by § 87(2)(b) [REDACTED] were located for this incident. **(Board Review 26)**
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]

Squad No.: 7

Investigator: Nicholas Venduras  
Signature

Inv. Nicholas Venduras  
Print Title & Name

July 27, 2021  
Date

Manager Vanessa Rosen

July 27, 2021

Squad Leader: \_\_\_\_\_  
Signature

Print Title & Name

Date

Reviewer:

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Signature

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Print Title & Name

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Date